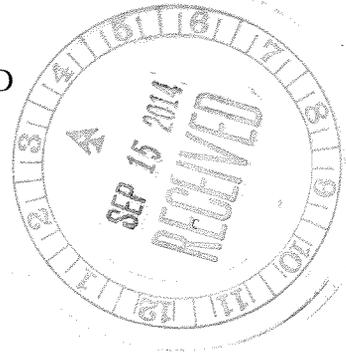


BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35855

SOUTHWESTERN RAILROAD, INC.
--LEASE EXEMPTION--
BNSF RAILWAY COMPANY

PETITION FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1150.42(e)



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SOUTHWESTERN RAILROAD, INC.

Dated: September 15, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 358__

SOUTHWESTERN RAILROAD, INC.
--LEASE EXEMPTION--
BNSF RAILWAY COMPANY

PETITION FOR WAIVER OF THE NOTICE
REQUIREMENTS OF 49 C.F.R. § 1150.42(e)

Southwestern Railroad, Inc. (“SW”), a Class III rail carrier, hereby petitions the Surface Transportation (“Board”) to waive the employee notice requirements of 49 C.F.R. § 1150.42(e).

SW is concurrently filing with the Board a notice of exemption under 49 C.F.R. § 1150.41 to permit SW to continue to lease and operate approximately 227.6 miles of rail lines located in New Mexico from BNSF Railway Company (“BNSF”). The rail lines that will continue to be leased by SW are located: (1) on the Carlsbad Subdivision between milepost 0.5, at Clovis, New Mexico, and milepost 183.0, at Carlsbad, New Mexico; (2) in the Carlsbad Yard; (3) on the Carlsbad Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, near Carlsbad, New Mexico; and (4) on the Loving Industrial Spur between milepost 0.0, at Carlsbad, New Mexico, and milepost 20.0, at Loving, New Mexico (the “Lines”). SW leased the Lines from a BNSF predecessor in 2004 and since that time has been the sole operator over the Lines. *See* STB Finance Docket No. 34533, *Southwestern Railroad Company, Inc. – Lease Exemption – BNSF Railway Company* (not printed), served October 22, 2004. In addition, SW has performed all of the maintenance on the Lines since 2004.

SW's current revenues exceed \$5 million thus invoking the employee notice requirements of Section 1150.42(e). The purpose underlying the notice requirement, however, would not be thwarted by waiver in this proceeding. The purpose of the notice requirement is to ensure that rail labor unions and employees working on a line being transferred are given adequate notice of the transaction. *See Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592 (1997). In adopting the notice requirement, the Board specifically recognized that “situations may occur necessitating acquirer requests for waiver of the 60-day notice provision....” *Id.* at 601.

Here, labor notice would serve no useful purpose. No BNSF employ will be affected by the lease because no BNSF employee has performed operations or maintenance on the Line since 2004. Neither will any SW employee be affected by the lease because SW will continue to provide the same service and perform the same maintenance as it has since 2004. Because the transaction will simply extend the term of the lease Agreement between SW and BNSF, providing advance labor notice would be a futile act. *See STB Finance Docket No. 34660, Georgia Central Railway, L.P. – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc.* (not printed), served February 28, 2005; *STB Finance Docket No. 34531, The Indiana Rail Road Company – Acquisition Exemption – Line of Monon Rail Preservation Corporation* (not printed), served November 22, 2004; *STB Finance Docket No. 34904, Dakota, Missouri Valley and Western Railroad, Inc. – Lease and Operation Exemption – Soo Line Railroad Company* (not printed), served July 24, 2006.

In summary, SW respectfully requests that the Board waive the requirements of 49 C.F.R. § 1150.42(e).

Respectfully submitted,



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Dated: September 15, 2014